

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**v.**

**B&E INDUSTRIES, d/b/a SPIRIT STOP**

**Defendant.**

**CIVIL ACTION NO.**

**1:08CV-132**

**CONSENT DECREE**

THIS CONSENT DECREE is made and entered into by and among the Plaintiff, Equal Employment Opportunity Commission ("EEOC"), and the Defendants, B&E Industries d/b/a Spirit Stop, in the United States District Court for the Northern District of Texas, Abilene Division, with regard to the EEOC's Complaint ("EEOC Complaint") filed in Civil Action No. 1:08-CV-132. This complaint was based upon Charges of Discrimination filed by Jennifer Larsen and Michelle McRae against B&E Industries d/b/a Spirit Stop.

The above-referenced Complaint alleges that the Defendant engaged in unlawful employment practices at its Abilene facility, in violation of Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. Section 2000e-2(a)(1) and Section 704(a) of Title VII, 42 U.S.C. § 2000e-(3)a, by subjecting Jennifer Larsen and Michelle McRae to a hostile working environment because of their gender (female).

Defendant denies the allegations contained in the Complaint.

EEOC and B&E Industries d/b/a Spirit Stop agree to compromise the differences embodied in the Complaint, and intend that the terms and conditions of the compromise be set forth in this Consent Decree ("Consent Decree").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in EEOC Charge Nos.450-2007-04932 and 450-2007-04289. This Decree further resolves all issues in the Complaint filed by the EEOC in this civil action. The EEOC waives further claims and/or litigation on all issues arising out of or relating to the above-referenced charges and Complaint. The EEOC does not waive processing charges other than the charges of discrimination specifically referenced above.

3. B&E Industries d/b/a Spirit Stop agrees that it shall conduct all employment practices in a manner which does not subject any employee to discrimination under Title VII.

#### **Scope of Consent Decree**

4. The duration of this Consent Decree shall be two (2) years from the date of entry of the Consent Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Consent Decree, including such orders as may be required to effectuate its purposes.

#### **General Provisions**

5. B&E Industries d/b/a Spirit Stop and its officers, agents, management, including supervisory employees on any level, successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from: (i) discriminating against any employee on the basis of sex; (ii) engaging in or being a party to any action, policy or practice

that is intended to or is known to them to have the effect of harassing or intimidating any employee on the basis of gender; and/or (iii) creating, facilitating or permitting the existence of a work environment that is hostile to its employees on the basis of gender.

6. B&E Industries d/b/a Spirit Stop and its officers, agents, management, including supervisory employees on any level, successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee of B&E Industries d/b/a Spirit Stop because he or she opposed any practice of sex discrimination or sex-based harassment made unlawful under Title VII; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation), proceeding, or hearing in connection with this case and/or relating to any claim of sex discrimination or sex-based harassment; was identified as a possible witness in this action; asserted any rights under this Consent Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with this Consent Decree.

#### **Non-Monetary Relief**

7. B&E Industries d/b/a Spirit Stop affirms the following "Equal Employment Opportunity Policy"

B&E Industries provides an employment opportunity to all our employees and applicants. Employees will be treated without regard to race, color, religion, sex, age, national origin, disability or any other protected class. This policy applies but is not limited to hiring, orientation, training, placement employee development, promotion, transfer, compensation, benefits, leave of absences and participation in Company social and recreational programs.

Employment decisions are based on employee's or job applicant's essential skills and abilities. We do not discriminate against employees or applicants with disabilities. Within reason, we will provide accommodations to otherwise qualified employees and applicants.

If you feel we are failing in our duty and promise of equal opportunity to all applicants and employees report the incident immediately in the following manner:

1. Immediate supervisor
2. Human Resources Department, if immediate supervisor is not the appropriate person or you are not comfortable discussing such matters with your supervisor.

We will take every reasonable measure to correct any inequities and promise that you will not be subjected to retaliation from bringing such matters to our attention. We will treat such concerns with the utmost confidence consistent with a full resolution of the problem.

8. POLICY: In order to effectuate the objectives embodied in B&E Industries d/b/a Spirit Stop's Equal Employment Opportunity Policy and this Consent Decree, B&E Industries d/b/a Spirit Stop shall make whatever specific modifications are necessary to its existing policies, procedures and practices in order to ensure that the following policies, procedures and practices are implemented. Further, the parties agree that this Consent Decree will be administered in a manner consistent with federal labor and employment discrimination laws.

9. COMPLAINT PROCEDURE: B&E Industries d/b/a Spirit Stop agrees that it shall revise its complaint procedure as necessary in order to ensure that it is designed to encourage employees to come forward with complaints about violation of its sexual harassment policy. As part of this policy, B&E Industries agrees that it shall provide its employees with

convenient, confidential and reliable mechanisms for reporting incidents of sexual harassment, sex-based harassment and retaliation. B&E Industries d/b/a Spirit Stop agrees that it shall designate at least two employees from the department charged with investigating such issues as persons who may be contacted, and their names, responsibilities, work locations and telephone numbers shall be routinely and continuously posted. Also as part of its procedure, B&E Industries d/b/a Spirit Stop agrees that it take seriously anonymous complaints received and investigate any anonymous complaint in a manner consistent with its newly established policy.

B&E Industries d/b/a Spirit Stop agrees that it shall make best efforts to ensure that appropriate remedial action is taken to resolve complaints and to avoid the occurrence of further incidents of sexual harassment, sex-based harassment and/or retaliation, up to and including termination.

10. SUPERVISOR ACCOUNTABILITY: B&E Industries d/b/a Spirit Stop agrees that it shall impose substantial discipline – up to and including termination, suspension without pay or demotion – upon any supervisor, manager, assistant manager or person with any supervisory authority -- who engages in sexual harassment or sex-based harassment or permits any such conduct to occur in his or her work area or among employees under his or her supervision, or who retaliates against any person who complains or participates in any investigation or proceeding concerning any such conduct. B&E Industries shall communicate this policy to all of its supervisors and managers.

B&E Industries d/b/a Spirit Stop agrees that it shall continue to advise all managers and supervisors of their duty to actively monitor their work areas to ensure employees' compliance with the company's sexual harassment policy, and to report any incidents and/or

complaints of sexual harassment, sex-based harassment and/or retaliation of which they become aware to the persons charged with handling such complaints.

11. TRAINING: For the two years that this Consent Decree is in effect, Defendant agrees that it shall (A) provide mandatory annual training on discrimination, including gender based discrimination, to all employees (Supervisory and non-supervisory) (B) provide 1 hour mandatory training on discrimination and the company's complaint procedure to all new employees during employee orientation; (C) provide mandatory training on gender-based discrimination to all senior management officials; and (D) provide training to all persons charged with the handling of complaints of gender-based discrimination and/or retaliation related thereto. The training of senior managers and persons handling complaints shall be at least 2 hours in duration and shall be conducted by experienced trainer and shall cover discrimination in the workplace and the techniques for investigating and stopping discrimination and harassment.

No less than 10 days before the annual training is conducted, B&E Industries Inc. d/b/a Spirit Stop agrees to give written notice to the EEOC as to the date and location of the training, the name of the person providing the training and the substance of the training.

B&E Industries d/b/a Spirit Stop agrees that it shall require a senior management official to introduce all sexual harassment training to communicate B&E Industries' commitment to its Equal Employment Opportunity Policy.

12. NOTICE POSTING: Within 14 days after entry of this Consent Decree, B&E Industries d/b/a Spirit Stop shall post a notice (attached to this Consent Decree as Exhibit "A") in prominent and conspicuous locations in each of its facilities. The notice shall remain posted for the duration of this Consent Decree. In the event that the persons and/or departments to whom individuals should make complaints alleging sexual harassment, sex-based harassment and/or

retaliation change during the term of the Consent Decree such that the information contained in the notice is no longer accurate, B&E Industries d/b/a Spirit Stop shall immediately prepare and post a revised notice that contains the correct information. B&E Industries d/b/a Spirit Stop shall promptly thereafter forward a copy of the revised notice to the EEOC.

B&E Industries d/b/a Spirit Stop will report to the EEOC that it has complied with this requirement within fourteen (14) days after posting the notice.

13. B&E Industries Inc. d/b/a Spirit Stop agrees to distribute a complete Employee handbook with the Equal Employment Opportunity Policy to each employee within 60 days of the date of the entry of this Consent Decree. New employees will be given a copy of the complete Employee Handbook within 30 days of the date of their hire. This procedure will remain in effect during the term of the Consent Decree.

#### **Monetary Relief**

14. B&E Industries d/b/a Spirit Stop agrees to pay the amount of \$33,750.00 to resolve all claims for damages to Jennifer Larsen. Within ten (10) days of the Court's issuance of this Consent Decree, B&E Industries will issue a check in this amount and mail or deliver it to the attention of Equal Employment Opportunity Commission, 207 S. Houston, Third Floor, Dallas, Texas 75202, Attention Suzanne M. Anderson. Check and subsequent 1099 will be made payable to Jennifer Larsen.

15. B&E Industries d/b/a Spirit Stop agrees to pay the amount of \$33,750.00 to resolve all claims for damages to Michelle McRae. Within ten (10) days of the Court's issuance of this Consent Decree, B&E Industries will issue a check in this amount and mail or deliver it to the attention of Equal Employment Opportunity Commission, 207 S. Houston, Third Floor,

Dallas, Texas 75202, Attention Suzanne M. Anderson. Check and subsequent 1099 will be made payable to Michelle McRae.

16. If B&E Industries fails to tender payment or otherwise fails to timely comply with the terms of Paragraphs 15 and 16 above, shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the defendant.

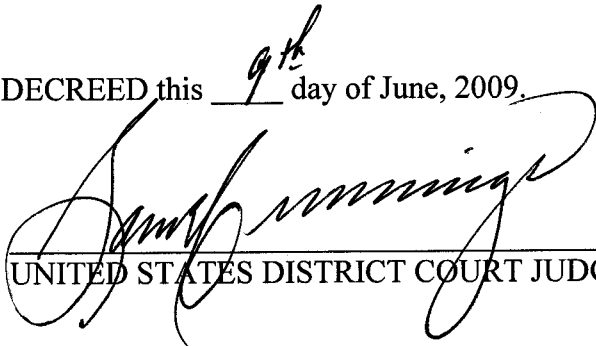
17. Neither the EEOC nor B&E Industries shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of any party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by any such party. Nothing in this Consent Decree shall be construed to preclude the EEOC from enforcing this Consent Decree in the event that B&E Industries d/b/a Spirit Stop fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Consent Decree.

18. COSTS: The parties to this Consent Decree agree to bear their own costs associated with the litigation of the above-referenced Complaint and the administration of this Consent Decree.

19. PERSONNEL FILE EXPUNGEMENT: B&E Industries d/b/a Spirit Stop agrees to remove from all personnel files of Jennifer Larsen and Michelle McRae all documents, entries and references relating to: the facts and circumstances which led to the filing of the

charges of discrimination; the charges themselves; and the complaint filed by the EEOC in federal court based upon charges.

SO ORDERED, ADJUDGED AND DECREED this 9<sup>th</sup> day of June, 2009.

  
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

Respectfully Submitted:

ON BEHALF OF THE EEOC:

:

ROBERT A. CANINO  
Regional Attorney  
Oklahoma State Bar No. 011782

/s/ Suzanne M. Anderson  
SUZANNE M. ANDERSON  
Supervisory Trial Attorney  
Texas Bar No. 14009470

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
207 S. Houston Street, 3rd floor  
Dallas, Texas 75202  
(214) 655-3328  
(214) 655-3331 (telefax)

ON BEHALF OF THE DEFENDANT

/s/ Lori Carr  
LORI CARR  
Texas Bar No. 13815690  
Taber Estes Thorne & Carr PLLC  
3500 Maple Avenue, Suite 1340  
Dallas, Texas 75219  
Direct: 214-526-2116

District Director

**ATTACHMENT A**

**NOTICE TO ALL EMPLOYEES**

This NOTICE will be conspicuously posted for a period of two (2) years at this facility and in all places where employment notices are posted. It must not be altered, defaced, or covered by any other material.

**PURPOSE:** This notice is being posted pursuant to an Agreement entered into between B&E Industries and the Equal Employment Opportunity Commission.

**SCOPE:** This policy extends to all employees of B&E Industries, both management and non-management.

**POLICY:** Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age or disability with respect to hiring, firing, compensation or other terms and conditions of employment.

B&E Industries affirms the following "Equal Employment Opportunity Policy":

B&E Industries provides an employment opportunity to all our employees and applicants. Employees will be treated without regard to race, color, religion, sex, age, national origin, disability or any other protected class. This policy applies but is not limited to hiring, orientation, training, placement employee development, promotion, transfer, compensation, benefits, leave of absences and participation in Company social and recreational programs. Employment decisions are based on employee's or job applicant's essential skills and abilities. We do not discriminate against employees or applicants with disabilities. Within reason, we will provide accommodations to otherwise qualified employees and applicants. If you feel we are failing in our duty and promise of equal opportunity to all applicants and employees report the incident immediately in the following manner:

1. Immediate supervisor
2. Human Resources Department, if immediate supervisor is not the appropriate person or you are not comfortable discussing such matters with your supervisor.

We will take every reasonable measure to correct any inequities and promise that you will not be subjected to retaliation from bringing such matters to our attention. We will treat such concerns with the utmost confidence consistent with a full resolution of the problem.

**NEGOTIATED SETTLEMENT AGREEMENT**

Discrimination because of gender and sexual harassment are prohibited by Title VII of the Civil Rights Act of 1964, as amended. This federal law prohibits an employer from discriminating against any employee as to the terms and conditions of employment because of an employee's gender. No employee, either male or female, should be subjected to unsolicited and unwelcome sexual conduct, either verbal or physical. Sex discrimination also can be defined as comments or conduct based on a person's gender.

The law also prohibits an employer from retaliating against employees who oppose what they believe to be unlawful employment practices. This Notice is intended to inform employees of their rights under federal law and to prevent future acts of employment discrimination.

The employee has the right, and is encouraged to exercise the right, to report allegations of discrimination, including sex discrimination and retaliation in the workplace. An employee may do so by notifying his/her immediate supervisor or Human Resources Department. Employees may also report allegations of discrimination to any supervisor or manager with B&E Industries.

Any report of such an allegation will be thoroughly investigated, with appropriate disciplinary action taken against any person(s) found to have engaged in discriminatory conduct.

A person either alternatively, or in addition to reporting such an allegation to company officials, may contact the Equal Employment Opportunity Commission for the purposes of filing a Charge of employment discrimination. The address and telephone number of the local EEOC office is 207 South Houston Street, Third Floor, Dallas, Texas 75202. The telephone number is (214) 253-2721. Information about your rights and how to file a Charge is also available on the Internet at [www.eeoc.gov](http://www.eeoc.gov).

EXCEPTIONS: There are no exceptions to this policy.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF TWO YEARS.

Signed this

5/21/09  
Date

day of

[Signature]  
B&E Industries

5/27/09  
Date

[Signature]  
Michael C. Fetzer  
District Director  
Equal Employment Opportunity Commission

NEGOTIATED SETTLEMENT AGREEMENT